

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

Kevin Embry,

NO. C 09-01808 JW

Plaintiff,

**ORDER REQUESTING ADDITIONAL  
BRIEFING ON THE STATUS OF  
APPEALS AT THE NINTH CIRCUIT**

v.

ACER America Corp., et al.,

Defendants.

On April 24, 2012, the Court issued an Order denying Objector Bandas' Motion to Reopen Case, finding that any error in dismissing Bandas' appeal was to be resolved by the Ninth Circuit, and not by this Court. (hereafter, "April 24 Order," Docket Item No. 245.) In light of this ruling, the Court found that Plaintiff's Motion to Require Appeal Bond<sup>1</sup> and Motion to Conduct Discovery<sup>2</sup> pertaining to the appellate bond were moot for lack of an active appeal. (April 24 Order at 2.) Accordingly, the Court denied Plaintiff's Motions as moot. (Id.)

Upon review of the docket in this case, the Court is concerned that a number of docketing errors may have occurred. Specifically, based on the timing with which the Ninth Circuit dismissed Objector Bandas' appeal, it appears that this dismissal may have intended to dismiss the appeal of Objector Cannata instead. Because Plaintiff's Motion to Require Appeal Bond seeks the

<sup>1</sup> (Docket Item No. 232.)


<sup>2</sup> (Docket Item No. 228.)

1 requirement of a bond from all Objectors,<sup>3</sup> the Court finds that the issue of the bond should not be  
2 addressed until the issue of which appeals remain active has been settled.

3 Accordingly, the Court ORDERS the parties to submit simultaneous briefs on the question of  
4 which, if any, appeals from Objectors remain active before the Court of Appeals. To allow the  
5 parties sufficient time to resolve any clerical issues with the Ninth Circuit, such briefs shall be  
6 submitted on or before **May 4, 2012**. If the Court finds that any appeals remain active at that time, it  
7 will reconsider its ruling on Plaintiff's Motion to Require Appeal Bond. Unless the Court orders  
8 otherwise, this matter, and any related motions regarding discovery, will be considered submitted for  
9 decision without oral argument.

10 This matter will not be called on the April 30, 2012 calendar. Thus, Plaintiff's Notice of  
11 Intent to Appear is stricken as unnecessary.

12  
13 Dated: April 26, 2012

  
\_\_\_\_\_  
JAMES WARE  
United States District Chief Judge

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26 \_\_\_\_\_  
27 <sup>3</sup> (See Docket Item No. 232 at 4 (contending that the Court should impose an appeal bond on  
28 "objectors Christopher Bandas, Sam Cannata and the Law Offices of Darrell Palmer").)

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Adam Gutride adam@gutridesafier.com  
3 Adam Joseph Bedel ajbedel@quinnemanuel.com  
4 Jeffery David McFarland jdm@quinnemanuel.com  
5 Joseph Darrell Palmer darrell.palmer@palmerlegalteam.com  
6 Sam Cannata [samcannata@cannataphillipslaw.com](mailto:samcannata@cannataphillipslaw.com)  
7 Seth Adam Safier seth@gutridesafier.com  
8 Stan Karas stankaras@quinnemanuel.com  
9 Todd Michael Kennedy [todd@gutridesafier.com](mailto:todd@gutridesafier.com)

10 **Dated: April 26, 2012**

**Richard W. Wieking, Clerk**

11 **By: /s/ JW Chambers**  
12 **Teresa De Martini**  
13 **Courtroom Deputy**